

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

John Doe, et al.,	:	
	:	
Plaintiff,	:	Case No. 1:15-cv-570
	:	
vs.	:	Judge Susan Dlott
	:	
John Husted, Ohio Secretary of State,	:	
et al.,	:	
	:	
Defendants.	:	

**DEFENDANTS IAN JAMES, STEPHEN LETOURNEAU, RESPONSIBLEOHIO  
AND STRATEGY NETWORK’S BRIEF IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY INJUNCTION**

Now come Defendants Ian James, Stephen Letourneau, ResponsibleOhio and the Strategy Network, LLC, and hereby submit this Memorandum in support of Plaintiffs’ Motion for Preliminary Injunction (ECF# 13).

**I. Introduction and Background.**

Plaintiff has filed this suit to enjoin enforcement of two administrative subpoenas issued by the Office of the Ohio Secretary of State “pursuant to the Secretary’s statutory authority set forth in Ohio Revised Code Sections 3501.05(N) and 3501.05 (EE).”

This matter pertains to the effort in Ohio, advocating for a change in Ohio’s laws allowing for legalization of marijuana under certain controlled circumstances, including providing for the legalization of medical marijuana. Defendant ResponsibleOhio is an organization that was founded approximately one year ago to advocate for the placement of

a marijuana legalization initiative on the popular ballot. ResponsibleOhio partnered with Defendant Strategy Network, LLC, to solicit a sufficient number of signatures to garner placement of the marijuana-legalization issue on the ballot during last month's election in Ohio. As part of the process of gathering signatures to secure placement of the issue on the ballot, ResponsibleOhio provided to the Ohio Secretary of State all of its signed petitions and part-petitions, so that the Secretary could confirm the validity of all signatures and determine whether sufficient signatures had been collected. In mid-August 2015, Secretary Husted validated the signatures and petitions collected by ResponsibleOhio and declared that it had gathered enough valid signatures to place the issue on the November ballot. Since that confirmation of ballot eligibility, however, Secretary Husted has been on a politically-motivated rampage to discredit the work of ResponsibleOhio, Strategy Network and its innumerable supporters.

Here, Husted seeks to enforce subpoenas which were amended in response to this lawsuit. Husted seeks to enforce subpoenas which he claims seek information related to alleged "fraud" in obtaining the citizen signatures to place the issue on the ballot. Even a cursory review of the subpoenas Husted seeks to enforce, however, demonstrates that the subpoenas bear no resemblance to this stated purpose. First, Husted currently possesses all information necessary to determine whether the petitions submitted by ResponsibleOhio contain valid signatures. *In fact, Husted, through county boards of election, has already validated all petition signatures and certified the marijuana-legalization issue to the ballot*

*months ago*. The subpoenas Husted seeks to enforce, however, do not relate to any of the signature-validation issues referenced in the Application itself. Instead, the subpoenas seek information regarding the inner workings of an active political campaign. In fact, Husted's own counsel describes the sought-after information as "communications between ResponsibleOhio and/or The Strategy Network and their employees concerning the proposed constitutional amendment . . . ." (Affidavit of Mark Weaver, ¶ 9, Exhibit A). In other words, the subpoenas are a frontal assault on the constitutionally-protected freedom of association rights of ResponsibleOhio, The Strategy Network and its supporters.

## **II. Preliminary Injunction to Enjoin Enforcement of Subpoenas.**

As outlined above, the subpoenas at issue here seek information related to a political campaign to legalize marijuana in Ohio. Although the "stated" purpose of the subpoenas is to discover evidence of alleged fraud in the collection of signatures to place this initiative on the November 2015 ballot, the unbelievably broad subpoenas, in fact, seek any and all "communications between ResponsibleOhio and/or The Strategy Network and their employees concerning the proposed constitutional amendment . . . ," among other information regarding the internal apparatus, strategies, policies and practices of this political campaign. (Subpoenas, Exhibit B).

Because Husted and his "special prosecutor" seek to discover internal communications regarding the strategies, operations and practices of a political campaign, the subpoenas violate the First Amendment to the United States Constitution and must be

quashed.

As stated by the United States Supreme Court:

It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations.

*NAACP v. Patterson*, 357 U.S. 449, 462 (1958).

“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976), quoting *Roth v. United States*, 354 U.S. 476, 354 U. S. 484 (1957). “The Court's decisions involving associational freedoms establish that the right of association is a ‘basic constitutional freedom,’” *Buckley*, 424 U.S. at 25, quoting *Kusper v. Pontikes*, 414 U.S. at 414 U. S. 57, that is “closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.” *Shelton v. Tucker*, 364 U. S. 479, 364 U. S. 486 (1960). “In view of the fundamental nature of the right to associate, governmental ‘action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.’” *Buckley*, 424 U.S. at 25, quoting *NAACP v. Alabama*, 357 U. S. 449, 460-461 (1958).

It is well established that “[f]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of freedom of speech.” *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 295 (6th Cir.1998). Given the right to freedom of association, disclosure of information is inappropriate when such disclosure will adversely affect an organization's ability “to pursue [ ] collective efforts to foster beliefs” and may “induce members to withdraw” or “dissuade others from joining . . . .” *NAACP*, 357 U.S. at 462–63.

Courts that have addressed subpoenas or requests for information similar to the subpoenas at issue here have held that “disclosing detailed descriptions of training programs, member mobilization campaigns, polling data, and state-by-state strategies will directly frustrate the organizations' ability to pursue their political goals effectively by revealing to their opponents ‘activities, strategies and tactics [that] we have pursued in subsequent elections and will likely follow in the future.’” *A.F.L.-C.I.O v. Federal Elections Comm’n*, 333 F.3d 168, 176-77 (D.C. Cir. 2003). In finding that disclosure of such internal operating materials was violative of the Constitution, the D.C. Circuit stated:

In this case, the AFL-CIO and DNC affidavits indicate that compelled disclosure of internal planning materials, though less direct than regulation of political group leadership or structure, will similarly frustrate those groups' decisions as to “how to organize ... [themselves], conduct... [their] affairs, and select ... [their] leaders,” as well as their selection of a “message and ... the best means to promote that message.” (Citations omitted). Although we do not suggest that any Commission action that places a political association at a disadvantage relative to its opponents violates the First Amendment, where, as here, the Commission compels public disclosure of an association's confidential internal materials, it intrudes on the “privacy of

association and belief guaranteed by the First Amendment," *Buckley*, 424 U.S. at 64, 96 S.Ct. at 656, as well as seriously interferes with internal group operations and effectiveness.

(Id. at 177-78).

The same is true in this case. Compelling disclosure of the types of internal programs, strategies and communications sought in the subpoenas at issue is clearly violative of the associational rights of the Defendants. As such, the subpoenas are unenforceable and must be quashed. Further, this matter is not moot simply because the election has passed. It is anticipated that the subpoenaed parties will be involved in subsequent campaigns in Ohio to legalize marijuana that may utilize some of the same techniques, strategies, and tactics that Husted seeks to discover here.

WHEREFORE, Defendants Ian James, Stephen Letourneau, ResponsibleOhio and Strategy Network, LLC, request this Court enter a preliminary and permanent injunction against enforcement of the subpoenas and award costs and attorney's fees so wrongfully incurred.

Respectfully submitted,

/s/ Larry H. James

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*Attorneys for Defendants,  
The Strategy Network, LLC,  
Responsible Ohio, Stephen LeTourneau  
and Ian James*

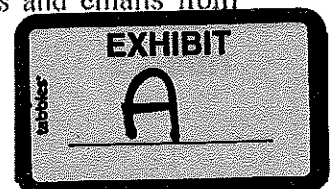
**CERTIFICATE OF SERVICE**

I hereby certify that on this **7th day of December, 2015**, I filed the foregoing with the Clerk of Court which will send notification of such service and subsequent filing to all counsel via the Court's Electronic Filing System.

/s/ Larry H. James  
Larry H. James, Esq. (0021773)

Case No. \_\_\_\_\_

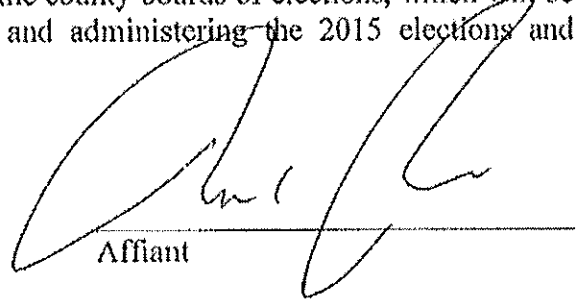
Judge \_\_\_\_\_



county boards of elections to report potential election law violations related to petitions being circulated and voter registration forms being collected by petitioners self-identified as circulating on behalf of The Strategy Network related to a proposed statewide constitutional amendment regarding marijuana.

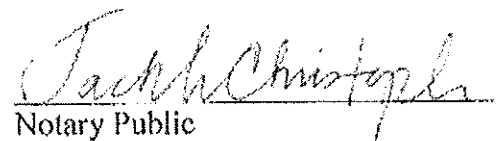
5. I also reviewed the subpoenas issued on July 30, 2015 to Ian James, CEO of The Strategy Network and Executive Director of ResponsibleOhio, and Stephen Letourneau, President and COO of The Strategy Network, pursuant to the authority set forth in Ohio Rev. Code § 3501.05(EE). It ordered them to appear for depositions and to produce documents related to the Secretary of State's investigation into the widespread, alleged fraud reported to this Office. On August 2, 2015, Ian James, through counsel, provided some of the documents requested in the subpoena.
6. After reviewing the documents provided as well as the James deposition testimony, I determined that additional documents and testimony were needed to complete the Secretary of State's investigation with respect to ResponsibleOhio and/or The Strategy Network employees.
7. On August 24, 2015, additional subpoenas were issued to gather more documents and to complete deposition questioning of Ian James. A suit was subsequently filed in the United States District Court for the Southern District of Ohio. A John Doe Plaintiff objected to the potential disclosure of his communications with ResponsibleOhio and/or The Strategy Network on First Amendment grounds. Out of an abundance of caution, the Secretary of State's office withdrew the subpoena on September 2, 2015 and on September 9, 2015 re-issued new subpoenas for depositions and documents to Ian James and Stephen Letourneau, both of The Strategy Network and ResponsibleOhio.
8. Fair and accurate copies of those most recent subpoenas are attached hereto as Exhibit 1 (Attachment "A").
9. The depositions and documents sought in the September 9, 2015 subpoena will help us understand the possible connection between the management and employees of The Strategy Network and the suspicious voter registration forms and petition signatures. The reports of suspicious forms, signatures and other activity were pervasive, potentially suggesting a more systemic network of fraud. Only an inquiry into the communications between ResponsibleOhio and/or The Strategy Network and their employees concerning the proposed constitutional amendment would allow us to conduct a complete investigation of those reported irregularities, as required by statute.
10. The requested documents will enable the Office to identify whether evidence of potential election law violations exist. At this point in the investigation, the potential violations include but are not limited to:

- knowingly impersonating another in attempting to register to vote, knowingly registering under more than one name or knowingly inducing any person to so register, or knowingly making any false statement on a form for registration (see, Ohio Rev. Code §3599.11),
  - signing a name other than the person's own on a petition, or signing knowing that the person is not qualified to sign it at the time, knowingly signing such a petition more than once, or signing a name other than the person's own on a petition (see, Ohio Rev. Code §3599.13), and
  - adding signatures or names other than the person's own name on a petition circulating or causing to be circulated a petition known to contain false, forged, or fictitious names, adding another person's signature or name on a petition, making a false certification or statement concerning a petition, filing with election authorities a petition knowing it to contain false, forged, or fictitious names, failing to fill out truthfully and file all itemized statements required by law in connection with a petition, or misrepresenting the contents, purpose, or effect of a petition for the purpose of persuading a person to sign or refrain from signing the petition (see, Ohio Rev. Code §3599.14).
11. A follow-up deposition of Ian James and a deposition of Stephen Letourneau are necessary because evidence collected from boards of election since the original deposition of Ian James raised new questions, and document review lead to further investigative leads. In addition, the documentation requested in the subpoena potentially would lead to new questions critical to the investigation.
12. It is imperative that the documents are produced as soon as possible so that any potential leads can be pursued while information is still fresh. The closer the calendar moves toward the November 3, 2015 general election, the more difficult it becomes to obtain necessary documentation from the county boards of elections, which will be busy through December preparing for and administering the 2015 elections and accepting filings for the 2016 elections.
13. Further affiant sayeth naught.



Affiant

Sworn to and subscribed in my presence this 5<sup>th</sup> day of October, 2015.



Notary Public

OFFICE OF THE SECRETARY OF STATE  
STATE OF OHIOSUBPOENA DUCES TECUM  
R.C. 3501.05(N) & (EE)STATE OF OHIO )  
 ) SS  
COUNTY OF FRANKLIN )IN RE: The Strategy Network, ResponsibleOhio, and Ian James—Potential Violations of Ohio Revised  
Code Title 35To: Ian James  
1349 East Broad Street  
Columbus, Ohio 43205

**YOU ARE HEREBY SUBPOENAED** pursuant to R.C. 3501.05(N) and (EE) to appear in the Office of the Secretary of State to testify as witness in a deposition in the above entitled matter and not to depart without leave. Failure to appear pursuant to this subpoena may subject you to criminal prosecution pursuant to R.C. 3599.37. Your appearance is required on the 2<sup>nd</sup> of October, 2015 at 9:00 a.m. and shall continue day to day until the deposition is completed at:

The Office of the Ohio Secretary of State  
180 E. Broad Street, 15<sup>th</sup> floor  
Columbus, OH 43215

A stenographic recording of the testimony will be taken.



**YOU ARE HEREBY SUBPOENAED** to produce and permit inspection, copying, testing or sampling of the documents or objects specified in Attachment A hereto by the close of business on the 28<sup>th</sup> of September, 2015 at the following address:

The Ohio Secretary of State  
Attention: Carrie Kuruc, Senior Elections Counsel  
180 E. Broad St, 15<sup>th</sup> floor  
Columbus, OH 43215  
(614) 995-4541

Section 2335.06 of the Ohio Revised Code provides that witnesses are entitled to receive \$12.00 for each full day's attendance and \$6.00 for each half day's attendance, plus fifty and one-half cents per mile traveled to and from his place of residence outside of Franklin County proper. Such fees are taxed as costs and mailed to the witness upon payment of the costs.

Carrie Kuruc, Senior Elections Counsel  
Attorney Name180 E. Broad St. 15<sup>th</sup> Floor -- Columbus, OH 43215  
Address

Signature

Ohio Secretary of State September 9, 2015  
Representing DateIssued: \_\_\_\_\_  
Return: \_\_\_\_\_  
Served by: \_\_\_\_\_  
Date Served: \_\_\_\_\_

Failure to appear and refusal to testify pursuant to this subpoena is a violation of Ohio Revised Code 3599.37, a misdemeanor of the first degree.

EXHIBIT

B

**Subpoena of Ian James**  
**Attachment A: List of documents to be produced**

As used herein, "document" shall have the broadest possible meaning under the Ohio Rules of Civil Procedure and/or the Ohio Revised Code and includes the original, each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) and (if the original is not in existence or subject to the control of the recipient of this subpoena) each copy, regardless of origin or location, of any handwritten, typewritten, printed, recorded, transcribed, punched, taped, tape recorded, photocopied, photostatic, filmed, microfilmed or otherwise prepared matter, however produced or reproduced, which is in the possession, custody or control of the recipient of this subpoena, including, but not limited to, all e-mails, text messages, instant messages, papers, letters, correspondence, catalogs, advertisements, memoranda, or minutes of meetings of conversations (personal or telephonic), desk pads, calendars, diaries, telephone pads, travel and expense records, reports, summaries, surveys, analyses, ledgers, journals and other formal or information books of record or account, bulletins, instructions, agreements, legal documents, billing records, telephone toll records, drafts, notebooks, worksheets, attorneys' and accountants' invoices, audits and audit records, purchase orders, accounting worksheets, time records, canceled checks, vouchers, check stubs and writing of every description, including drawings, graphs, charges, photographs, films, recordings, transcriptions of recordings, computer tapes and printouts, thumb drives, external drives, and contents of cloud drives, and other data or compilations from which information can be obtained and translated, if necessary, by the recipient of this subpoena through detection devices into reasonably usable form.

1. For all of the following documents, personally identifying information for Mr. John Doe, who filed Case No. 1:15-cv-570, and anyone similarly situated who is not an employee or independent contractor of ResponsibleOhio and/or Strategy Network may be redacted.
2. Any and all documents or electronically stored information in your possession or under your control reflecting communications, between ResponsibleOhio and/or Strategy Network and their employees concerning the proposed statewide initiative to amend the Ohio Constitution referred to as Issue 3, formerly known as the Marijuana Legalization Amendment, beginning March 13, 2015 through the present day.
3. Any and all documents or electronically stored information in your possession or under your control related to names of individuals and/or entities who are or were employees of ResponsibleOhio and/or Strategy Network beginning March 13, 2015 through the present day for the proposed statewide initiative to amend the Ohio Constitution referred to as Issue 3, formerly known as the Marijuana Legalization Amendment.
4. Any and all documents or electronically stored information in your possession or under your control listing job titles and job descriptions for each employee of ResponsibleOhio and/or Strategy Network, beginning March 13, 2015 through the present day, for the proposed statewide initiative to amend the Ohio Constitution referred to as Issue 3, formerly known as the Marijuana Legalization Amendment, including but not limited to all management staff, Team Leaders, Petitioners, members of the **Petition Book Management team**, and members of the **Data Entry Onsite /Remote team**.

5. Any and all documents or electronically stored information in your possession or under your control related to or reflecting policies, procedures, recommendations, directions, or instructions provided to employees of ResponsibleOhio and/or Strategy Network for the proposed statewide initiative to amend the Ohio Constitution referred to as Issue 3, formerly known as the Marijuana Legalization Amendment, as referenced on page 26 of "Your Comprehensive Guide to our Policies and Procedures: Worker Handbook," including but not limited to "daily instructions including everything from campaign message, destinations to travel to, and updates on what [we] are learning from other offices in the field," reports of "incident[s] with another company and/or law enforcement," and "information to respond to objections that [you] encounter in the field," beginning March 13, 2015 through the present day.
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8. Any and all documents or electronically stored information in your possession or under your control related to or reflecting discipline actions as a result of violations of any company policy or any Ohio election law, including but not limited to "Fraud" and "Liars are Fired Policy," referenced on page 14 of "Your Comprehensive Guide to our Policies and Procedures: Worker Handbook" or incidents handled by the "Conflict Resolution" process referenced on pages 27-28 of "Your Comprehensive Guide to our Policies and Procedures: Worker Handbook," beginning March 13, 2015 through the present day.
9. A copy of the sticker placed on the back of each employee's clipboard during petition circulation beginning March 13, 2015 that contained a general overview of proposed statewide initiative to amend the Ohio Constitution referred to as Issue 3, formerly known as the Marijuana Legalization Amendment, for which petitioners were seeking signatures, as referenced by Mr. Ian James in the interview of August 10, 2015.

OFFICE OF THE SECRETARY OF STATE  
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R.C. 3501.05(N) & (EE)STATE OF OHIO )  
 ) SS  
COUNTY OF FRANKLIN )

IN RE: The Strategy Network, ResponsibleOhio, and Stephen Letourneau--Potential Violations of Ohio Revised Code Title 35

To: Stephen Letourneau  
1349 East Broad Street  
Columbus, Ohio 43205

**YOU ARE HEREBY SUBPOENAED** pursuant to R.C. 3501.05(N) and (EE) to appear in the Office of the Secretary of State to testify as witness in a deposition in the above entitled matter and not to depart without leave. Failure to appear pursuant to this subpoena may subject you to criminal prosecution pursuant to R.C. 3599.37. Your appearance is required on the 2<sup>nd</sup> of October, 2015 at 2:00 p.m. and shall continue day to day until the deposition is completed at:

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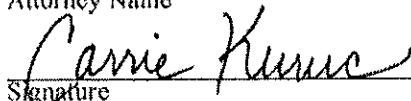
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Address

Signature

Ohio Secretary of State September 9, 2015  
Representing DateIssued: \_\_\_\_\_  
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Served by: \_\_\_\_\_  
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**Subpoena of Stephen Letourneau**  
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